

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 140 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-****HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
C D R LAXMIDEVI - Respondent(s)

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Appearance :

MR JIGAR SHAH FOR MR MANISH R BHATT for
Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2005

ORAL JUDGMENT**(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)**

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following questions under Section 256(1) of the Income Tax Act,1961 at the instance of the Commissioner of Income Tax, Rajkot.\

“(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that on a plain reading of the relevant provisions show that in the context in which it has been used, the expression 'an employee or any other person' occurring in sec.37(3) does not include the assessee herself ?

(2)Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the Rule 6D of Income-

tax Rules, 1962 were not applicable in relation to travelling expenses incurred by the assessee ?”

2 The Assessment Year is 1984-85 and the relevant accounting period is the year ended on 31/3/1984.

3 Heard Mr. Jigar Shah, learned Advocate for Mr. M. R. Bhatt, Senior Standing Counsel for the applicant-revenue. Though served there is no appearance on behalf of the respondent-assessee.

4 The learned Advocate has drawn attention to the decision dated 28/8/2001 of this Court in Income Tax Reference No. 43 of 1987 in the assessee's own case for Assessment Years 1979-80 & 1980-81 involving identical questions. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5 In light of the decision of this Court in Income

Tax Reference No.43 of 1987 it is held that the Tribunal was right in law in holding that for the purpose of computing the figure of disallowable portion of travelling expenses incurred by the assessee under section 37(3) of the Act read with rules 6(D) of the Income Tax Rules,1962 the phrase "employee or any other person" would not take within its sweep the assessee herself.

6 The question referred is, therefore, answered in the affirmative i.e. in favour of the assessee and against revenue.

7 The reference is disposed of accordingly with no order as to costs.

Sd/-

Sd/-

(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt